

More isn't always better

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By ANDREW H. BAIDA,

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Although I did not know it at the time, my verbal SAT score taught me one of the best lessons I have learned about the relationship between numbers — be it the number of points on a test, or the number of cases or pages in a brief — and the strength of a person's writing.

Due to my modest nature, I will refrain from revealing what the actual score was, but let's just say that when I disclosed it to the normally unflappable managing partner of my firm, he was so overwhelmed that the only words he could utter in response were, "That's disturbing." He probably would have been even more disturbed if he knew — which he doesn't and won't because he never reads this column — that my score was really 10 points lower than the score that I thought it was, as I discovered while cleaning the attic earlier this month when I came across the official "Student's Report" that the College Board originally sent me in January of 1976.

Yep, my verbal SAT score was pretty low. How low was it, you may ask? It was so low that, but for a significantly higher math SAT score, I'm not sure I would have been admitted even to the Correspondence School of New Zealand.

Some charitable readers out there may be thinking that perhaps I was victimized in the same way that thousands of high school students recently were by what the College Board's president labeled a "technology glitch," which resulted in thousands of incorrect low SAT scores. I suppose that could have happened to me, just as it's conceivable that the College Board screwed up even more the next time I took the SAT, when my verbal score was 60 points lower than my first score. Until I received that second Student's Report, I didn't know that it was possible for a person to get a score that low, but I'm here to tell you that you can and I did. As James Thurber once said, you could look it up. Well, not really, since these scores are confidential, but I just wanted to quote a well known writer to prove that, yes, I do know how to read.

I imagine another person with a larger brain or ego would not loudly trumpet receiving a verbal score the second time around that was so low that not even Ripley's believed it. But I practically beam with a perverse sense of pride in the College Board's assessment of my writing ability, pretty much the same way that my mother still gloats with delight about her son the lawyer every time she runs into my kindergarten teacher who tried to have me secretly evaluated, and sent to a "special" school, because she was convinced that I was afflicted with what the medical community now calls Attention Deficit Hyperactivity Disorder but in 1963 endearingly referred to as Minimal Brain Damage.

Less isn't always worse

Regardless of whether others believe that the College Board and/or Miss Kennedy hit the nail on the head, the one lesson I learned from my two SAT experiences is that less isn't always worse when it comes to writing. Especially in brief-writing.

One of the best examples I can think of is when a brief discusses cases. Meaning, other cases, not yours. It is not unusual for lawyers to spend multiple sentences and even paragraphs reciting ad nauseum the facts and holding from another case that they obviously believe is "on point." If you are one of those lawyers, do yourself a favor and try not to be.

A lengthy explanation of the facts of any case other than yours should be avoided because such a protracted discussion directly interferes with the flow of your argument. Cases are most effective when they are used to advance the argument, rather than consume it. The more time you spend discussing another case, the less persuasive your argument is because it has the unintended effect of completely redirecting the court's focus away from the facts and issues in your case.

This is not what you want when you are attempting to persuade the court to resolve the appeal in favor of your client. Judges know how to read cases. Good advocacy focuses on the key portions of a relevant case and articulates, generally in no more than a few sentences, the reasons why that case is relevant and compels the result you are asking the court to reach.

Perhaps the only time you should discuss any case at length is when the decision is virtually indistinguishable from your case and controls its outcome. But really, how often does that happen?

As important as brevity is when discussing favorable authority, it is even more imperative to be succinct when disposing of cases that are cited against you, which, as you know from reading this column in the past, you will not do until after you have made your argument and discussed your cases first.

Distinguishing adverse authority is almost always a defensive exercise, which means that every word that you write informing the court why this case is inapposite, or why that one is distinguishable, is one less word in your brief that is used to persuade the reader to adopt your point of view. Don't waste your time or the judges' with unnecessary backpedaling. Zero in on the core reason why the other side's authority is irrelevant or inapplicable or whatever pejorative adjective works for you, and move on.

Which is what I will do in a moment, but not before I briefly mention two additional, related examples of when more isn't always better in brief-writing. Using string citations may increase the number of cases listed in the table of authorities, but it adds nothing else to your brief. Similarly, although relying on cases for multiple general propositions will lengthen your brief, it does little to define the manner in which your case should be decided. Numbers are simply not the be-all and end-all of effective legal writing.

At least, that's what I've been telling myself ever since I was a first year law student and received the lowest grade I ever got in law school — in legal writing. I haven't told the managing partner about that one, and I'm not sure that I will. After all, I wouldn't want to disturb him.

Andrew H. Baida is a partner at Rosenberg|Martin|Funk|Greenberg LLP in Baltimore. He is an adjunct professor of appellate advocacy at the University of Maryland School of Law, and of Maryland administrative law at the University of Baltimore School of Law.

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